IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13-02-2007

Coram:

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.8335 of 2003

K.M.Valliappan .. Petitioner

Versus

1. Joint Director of School Education,
(Higher Education),
Chennai.

2. Madras Seva Sadhan Higher Secondary School,
rep. by its Secretary,
Gandhi Road, Tambaram,
Chennai-45. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution, praying for the issuance of Writ of Certiorarified Mandamus, for the reliefs as stated therein.

For petitioner : Mr. R.Subramanian

For Respondents : Mr.M. Sekar, Special G.P for R1
Mr.C.Ravichandran -R2

ORDER

This Writ Petition has been filed praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order, dated 22.10.2002 passed in CMA No.170 of 2000 on the file of I Asst.City Civil Judge's Court, Chennai (Private Schools Appellate Authority), to quash the same and direct the 2nd respondent to reinstate the petitioner with all back wages and attendant benefits.

2. The petitioner, while working as Head Master in the second respondent school, for certain irregularities, he was served with a Charge memo, dated 26.6.1995 and a subsequent Charge memo, dated 6.7.1995. The petitioner has submitted his explanations to both charges on 25.7.1995 and 26.7.1995 respectively. By appointing

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a Sub Committee consisting of Mr.C.Pratap Kumar and Mr.V.Chandrasekar, the School Committee of the second respondent, by order, dated 16.9.1995, has directed the Sub Committee to conduct the enquiry against the petitioner. Since the petitioner has opposed for appointment of one of the members, i.e. C.Prapap Kumar in the Sub Committee for conducting the enquiry, it was decided by the School Committee to have one man enquiry through M.Chandrasekar alone. Ultimately, after the enquiry report, by proceedings, dated 18.11.1995, the School Committee has decided to issue a show cause notice as to why the petitioner should not be dismissed from service and as such, notice was issued to the petitioner on 24.11.1995, to which, the petitioner has also given reply on 28.11.1995. On 7.12.1995, the School Committee decided to dismiss the petitioner and sought for approval from the Chief Educational Officer as required under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. On 25.3.1999, the Chief Educational Officer has accorded permission for dismissal of the writ petitioner. It was as against the said order of the Chief Educational Officer, the petitioner has filed an appeal before the first Appellate Authority, i.e. Joint Director of School Education (Higher Education) and by order, dated 31.8.2000, the Joint Director of School Education has reversed the decision of the Chief Educational Officer. The appellate authority has passed the order based on Rule 17(1) of the Tamil Nadu Recognized Provate Schools (Regulation) Rules, 1974 stating that before removing the petitioner, prior approval from the Chief Educational Officer should have been obtained. It was as against the said order of the appellate authority, namely, the first respondent, the second respondent has filed a second appeal in CMA No.170 of 2000 on the file of the Private Schools Appellate Tribunal.

3. The Tribunal, by order, dated 22.10.2002 passed in CMA 170 of 2000 has allowed the appeal filed by the second respondent herein confirming the order of dismissal, dated 21.4.1999 passed by the second respondent against the petitioner. It was as against the said order of the Private Schools Appellate Tribunal, the petitioner has filed the above Writ petition.

4. In respect of the question relating to holding the disciplinary proceedings by the School Committee as per the provisions Tamil Nadu Private Recognized Private Schools (Regulation) Act, 1973 (in short, "the Act"), since there has been conflict of views between various decisions of this Court, the matter was referred to Full Bench of this Court. The Full Bench, by its Judgment, dated 4.9.2006 in W.P.No.8335 of 2003, while holding that the School Committee has not followed the principles of natural justice in conducting the enquiry, has set aside the order of dismissal passed against the petitioner by the second respondent. However, after hearing of the matter before the Full Bench was over,

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since a Joint memo duly signed by the petitioner and the second respondent was filed, wherein, the financial benefit to be paid to the petitioner on setting aside the order of dismissal has been split out, the Full Bench while considering this aspect, has directed that the issue relating to the payment of financial benefit payable to the petitioner and the question as to whether such amount has to be paid by the first respondent or second respondent has been left open to be decided by the learned single Judge. It was, as per the said direction of the Hon'ble Full Bench, the present Writ Petition is posted before this Court for decision.

5. Therefore, the decision, which has to be rendered by this Court is as to whether the first respondent or second respondent has to pay the financial benefits due to the petitioner since admittedly, the Full Bench has quashed the order of dismissal passed by the second respondent against the petitioner, dated 7.12.1995 and even the joint memo signed by the petitioner and the second respondent, states that the total amount payable to the petitioner by the second respondent towards pay arrears is Rs.3,40,000/-.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

7. Mr.R.Subramanian, learned counsel for the petitioner would submit that the second respondent, while filing the appeal in CMA No.170 of 2000 against the order of the first respondent, who is the first appellate authority, dated 31.8.2000, has, in fact, deposited the amount of more than Rs.3,40,000/- on the file of the Private Schools Appellate Tribunal, to the credit of CMA No.170 of 2000 and in spite of the fact that the order of the Full Bench has already quashed the order of dismissal passed against the petitioner as early as on 4.6.2006, the petitioner is not able to receive the amount from the Private Schools Appellate Tribunal. However, by virtue of the Full Bench order directing the single Judge to decide as to who has to bear the amount, the petitioner has not withdrawn the said amount.

8. It is admitted fact that the School committee of the second respondent, by resolution dated 7.12.1995 has dismissed the petitioner without obtaining prior approval from the Chief Educational Officer, who is the competent authority and the Chief Educational Officer has accorded permission only on 25.3.1999. The said fact that without approval of the competent authority, the second respondent has dismissed the petitioner from service is not in dispute.

9. Section 22 (1) The Tamil Nadu Recognized Private Schools Regulations Act, reads as under:

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> "22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority."

Therefore, from a reading of the above, it is clear that such dismissal or removal shall not be done unless except without the prior approval of the competent authority.

10. The first appellate authority, namely, the Joint Director of School Education (Higher Education), the first respondent herein by the order, dated 31.8.2000 by relying upon Section 17(1) of the Act, has held that the dismissal of the petitioner from service from 7.12.1995 is not valid in law and directed the second respondent to reinstate the petitioner as Head Master. It is also seen on record that after the Chief Educational Officer passed order, dated 25.3.1999 in and by which, he has accorded permission for dismissal of the petitioner, it is at the most valid only from the said date of permission as per Section 17 (1) of the Act. The petitioner immediately, thereafter, has filed the appeal before the first respondent on 24.4.1999 itself. It is well within the period of limitation and thereafter, the first respondent being the first appellate authority, as stated above, has directed the petitioner's reinstatement as Head Master. Therefore, for the period between 7.12.1995 to 25.3.1999 during which time, the second respondent has dismissed the petitioner from service without following the provisions of the Tamil Nadu Private Recognized Private Schools (Regulation) Act, 1973, namely, without obtaining prior permission from the Chief Educational Officer, I am of the view that the amount towards pay arrears payable to the petitioner for this period, i.e. 7.12.1995 to 25.3.1999 has to be borne only by the second respondent management.

11. As far as the payment of salary from 26.3.1999 till the date of retirement of the petitioner, i.e. 31.5.2003, when the Chief Educational Officer who is the authority under the Act has accorded permission, I am of the view that it is the first respondent who has to bear the amount towards arrears of pay payable to the petitioner for this period, since ultimately, the Hon'ble Full Bench by its Judgment, dated 4.9.2006, has set aside the order of dismissal and therefore, there is absolutely no difficulty to come to the conclusion that the salary for the period from 26.3.1999 till the date of retirement of the petitioner i,.e.31.5.2003 has to be borne by the first respondent.

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In the light of the above discussion, the Writ Petition is ordered, directing the second respondent to pay the pay arrears payable to the petitioner for the period from 7.12.1995 to 25.3.1999 and also directing the first respondent to pay the pay arrears for the period from 26.3.1999 till the date of retirement of the petitioner, namely, 31.5.2003. It is made clear that the petitioner shall be entitled to withdraw the amount towards pay arrears due to him for the period from 7.12.1995 to 25.3.1999 from and out of the amount deposited to the credit of CMA No.170 of 2000 before the Tamil Nadu Private Schools Appellate Tribunal. The Tribunal shall return the balance amount to the second respondent after paying the above said amount to the petitioner. The first respondent is directed to pay the salary for the period, namely from 26.3.1999 till the date of retirement, namely, 31.5.2003 to the petitioner, within a period of eight weeks from the date of receipt of copy of this order and also settle all the retirement benefits. No costs. It is made clear that the terminal benefits to the petitioner shall be payable by the first respondent.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. Joint Director of School Education,
(Higher Education), Chennai.

2. The Secretary
Madras Seva Sadhan Higher Secondary School,
Gandhi Road, Tambaram, Chennai-45.

3. The Registrar,
(The Tamilnadu Private Schools
Appellate Tribunal/Ist Assistant Judge)
City Civil Court, Chennai-104.

1 cc to M/s. Hema Sampath, Advocate, Sr. 8954
1 cc to Mr.C. Ravichandran, Advocate, Sr. 8992
1 cc to Government Pleader, Sr. 9053

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